Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Puerto Rico Telephone Company Inc. For Election of Price Cap Regulation and For Limited Waiver of Pricing and Universal Service Rules	)	WC Docket No. 07-292

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

The Commission should grant the petition of Puerto Rico Telephone Company, Inc. ("PRT") to elect price cap regulation no later than June 1, 2008, and, to the extent necessary, waive certain pricing and universal service high-cost support rules related to PRT's election. As demonstrated in PRT's Petition and as confirmed by the Comments of the Independent Telephone & Telecommunications Alliance ("ITTA"), granting PRT's Petition is consistent with Commission precedent and would benefit the public by enabling PRT "to maximize operational efficiencies while meeting critical demands arising out of a dynamic telecommunications marketplace."[1]

The only commenter opposing PRT's Petition is WorldNet Telecommunications, Inc. ("WorldNet"), a facilities-based competitor of PRT's. However, WorldNet's opposition is premised upon its self-serving desire to: (1) hamstring a competitor in the marketplace by denying PRT the regulatory flexibility enjoyed by other competitors; and (2) benefit from artificially low special access rates to which it is not entitled. In the process, WorldNet's opposition misstates both the facts and the law.

---

[1] ITTA Comments at 2.

WorldNet does not deny, nor could it, that rate-of-return regulation is an antiquated regulatory regime that is poorly suited to today's telecommunications market. Nor does WorldNet dispute the Commission's preference for price cap regulation over rate-of-return regulation.[2]

Instead, WorldNet argues that PRT should not be allowed to operate under price regulation because, according to WorldNet, "competition has not taken hold in Puerto Rico ...."[3] However, this argument is belied by WorldNet's own pronouncements that it has built "a strong customer base" and offers "a true facilities-based competitive option to consumers in Puerto Rico."[4] Furthermore, WorldNet does not offer any credible evidence to rebut the facts presented by PRT that competitors have more than a 40% market share of the business market in Puerto Rico and collectively serve approximately 18% of the residential market.[5]

---

[2] PRT Petition at 4-6 (citing *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, ¶¶ 3-7 (1995) ("*LEC Price Cap Performance Review*") and *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 35 (1990) ("*LEC Price Cap Order*")); *see also Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 13 (2000) ("*CALLS Order*"), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC,* 265 F.3d 313 (5th Cir. 2001), *on remand,* 18 FCC Rcd 14976 (2003).

[3] WorldNet Comments at 2.

[4] *Id.*

[5] PRT Petition at 4. Rather than present facts concerning the current state of competition in Puerto Rico, which is robust, WorldNet seeks to rely upon outdated information contained in a 2003 filing by the Telecommunications Regulatory Board of Puerto Rico ("Board") and introduced in a 2004 proceeding before the Board. WorldNet Comments at 4-5. WorldNet's reliance upon such stale competitive information is misplaced.

WorldNet's suggestion that the Commission has foreclosed rate-of-return carriers from electing price cap regulation and that the Commission did so at the urging of PRT is erroneous.[6] First, as PRT noted in its Petition, the issue of carriers electing price cap regulation on a post-CALLS basis was not addressed in the *CALLS Order,* and while the Commission subsequently reached the tentative conclusion that its rules "should be amended to clarify that new carriers or carrier study areas may not elect [the CALLS] plan,"[7] the Commission never adopted this conclusion. Thus, 47 C.F.R. § 61.41(a)(3), which permits an incumbent LEC to elect price cap regulation, remains in place and has not been modified – a rule WorldNet does not bother to address.

Second, more than five years ago, PRT stressed the importance of the Commission's ensuring that adequate universal service support remains available to "carriers that convert to price cap regulation, or any other alternative incentive regulation that may be adopted ...."[8] PRT recognized then as now that the election of price cap regulation cannot occur in a vacuum and that continued availability of universal service support is essential to PRT's meeting the demands of serving an insular area even under price cap regulation. In this case, PRT's request for limited waivers to permit continued support, although as a price cap carrier, is completely consistent with PRT's advocacy more than five years ago, notwithstanding WorldNet's suggestion otherwise.

---

[6] WorldNet Comments at 3.

[7] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, ¶ 93 (2004).

[8] Comments of Puerto Rico Telephone Company, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, at 2 (filed Feb. 14, 2002).

Equally erroneous is WorldNet's argument that granting PRT's Petition "would be contrary to the Commission's intent in adopting a price cap regime."[9] The Commission intended that price cap regulation would lead to lower prices, greater innovation, and enhanced efficiencies.[10] That those results may not have been achieved under rate-of-return regulation, as WorldNet asserts, is hardly surprising and is the very reason the Commission should grant PRT's Petition.

WorldNet complains that granting PRT "special access pricing flexibility" would negatively impact "competition in Puerto Rico" because of its inability to obtain multiplexing on an unbundled basis under decisions of the Commission and the Board. WorldNet Comments at 5. Such complaints are nothing more than collateral challenges to the Commission's price cap regime and agency unbundling determinations, which have nothing to do with the merits of PRT's Petition or the issues before the Commission in this proceeding.

WorldNet's insistence that PRT's special access rates are "too high" because they exceed the TELRIC rate for equivalent facilities offered on an unbundled basis is like comparing apples to congealed fruit salad.[11] That special access prices are higher than TELRIC rates is not surprising and hardly evidences that PRT's special access rates are unreasonable. As the Commission observed nearly a decade ago, "even in those areas where competition for special access services is present and where, presumably the triggers for pricing flexibility have been met, the price differentials between TELRIC-priced transport and special access may persist for

---

[9] WorldNet Comments at 3.

[10] *See LEC Price Cap Performance Review*, ¶¶ 1-3 & 28; *LEC Price Cap Order*, ¶¶ 31-32; *CALLS Order*, ¶ 16.

[11] WorldNet Comments at 6.

an indefinite period of time because the differential between unbundled transport and retail special access services are significant."[12]

The more relevant comparison is between PRT's price cap rates for special access services and the comparable tariffed monthly special access rates of other price cap carriers. As PRT demonstrated in its Petition, PRT's DS1 rates are approximately 45 percent to 74 percent lower than comparable rates charged by price cap carriers under CALLS, while PRT's DS3 rates are approximately 36 percent to 54 percent lower.[13] This evidence – which WorldNet ignores and makes no attempt to dispute – underscores the reasonableness of PRT's special access rates.

While not opposing PRT's request to operate under price cap regulation, AT&T objects to PRT's proposal to transition its interstate switched access rate, which currently is $0.013 per minute, to the primarily rural price cap target of $0.0095 per minute. AT&T observes, correctly, that PRT's switched access lines per square mile exceed 19 lines per square mile, which is the threshold under section 61.3(qq)(2) of the Commission's rules for defining primarily rural cap carriers.[14]

However, AT&T does not address the substance of PRT's request for a limited waiver of section 61.3(qq)(2), which is not premised upon the number of switched access lines per square mile. Rather, a waiver is appropriate because PRT's costs closely resemble those of a rural carrier given the unique geographic and economic challenges PRT faces in serving Puerto Rico. As the Commission reasoned in the *CALLS Order*, the target average traffic sensitive ("ATS")

---

[12] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 341, n.673 (1999).

[13] PRT Petition at 16 (citing Declaration of Cristina Lambert ¶ 9).

[14] 47 C.F.R. § 61.3(qq)(2).

rate of \$0.0095 per minute is appropriate for primarily rural price cap carriers because of the "significantly higher" costs these carriers experience "[d]ue to the nature of their service areas ..." and their inability to "spread those costs over a large subscriber base."[15]

The same is true for PRT, as the Commission recognized more than a decade ago when it found that "insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations."[16] This finding, consistent with the Commission's reasoning in establishing the \$0.0095 per minute target ATS, warrants application of that target to PRT, even though PRT serves more than 19 access lines per square mile.

Accordingly, the Commission should grant PRT's Petition, permitting PRT to elect price cap regulation no later than June 1, 2008 and waiving certain pricing and universal service high-cost support rules related to PRT's election.

Respectfully submitted,

By: /s/ Bennett L. Ross

Roberto García Rodríguez
Vice President – Corporate & Legal Affairs
PUERTO RICO TELEPHONE
COMPANY, INC.
1515 Roosevelt Avenue, 12th Floor
Caparra Heights, PR 00921
(787) 793-8441

Nancy J. Victory
Bennett L. Ross
Stephen E. Merlis
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Counsel for Puerto Rico Telephone Company, Inc.

February 5, 2008

[15] *CALLS Order*, ¶ 177.

[16] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997).